N.° 9.

THE King of PRUSSIA'S PLAN

For Reforming the

Adminiſtration of Juſtice,

DRAWN UP

By His MAJESTY himſelf.

BY WHICH

The METHOD of Proceeding in the Courts of Juſtice is regulated in ſuch Manner, that in the Space of a Year, all Cauſes are finally determined.

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Printed by G. Terwen;

For T. Morris Bookseller in Paternoster-row.

A

PLAN

For Reforming the

Adminiſtration of JUSTICE,

Drawn up by the King of *Pruſſia* himſelf.

§. I.

LEWIS XIV. acquired as much Glory by the Reformation of Juſtice, as by the great Number of Victories he gained over his Enemies. That great Prince publiſhed in 1667, the famous *Code-Louis*; on which Occaſion a Medal was ſtruck, whereon the King was repreſented ſitting on his Throne, holding in one Hand a Balance, and receiving with the other a Sword preſented him by *Juſtice*, with this Inſcription: LITIVM. SERIES. RECISAE. and lower: NOVO. CODICE. LATO *.

The King did not ſtop here. In 1668, he cauſed a ſtrict Enquiry to be made into the Conduct of the Judges of the Provinces; of which happy Event the Academy of Inſcriptions

* *See* La Vie de *Colbert*, p. 157, and *Limieri* Explication Hiſtorique des Médailles, p. 85.

tions have tranſmitted the Memory to Poſterity by a Medal, where the King is repreſented on his Throne, giving his expreſs Orders to *Juſtice*, who flies to put them in Execution: with this Inſcription: TVTATOR. POPVLORVM. and lower: EMENDATI. PROVINCIARUM. IVDICES †.

§ 11. However great and praiſe-worthy this Undertaking might be, it ſerved only to correct ſome Abuſes in the Method of Proceeding, and to introduce an uniform Method into all the Provinces of the Kingdom.

As to any thing farther. 1. The Author of the *Life of Colbert* hath juſtly obſerved, that this Reformation hath hardly accelerated the Determination of Cauſes; and the Reaſon is very Evident; the CODE is extremely ſuccinct, and only touches a very few of the principal Things relating to Suits.

2. Even the Method of Proceeding is not regulated in ſuch Manner that Cauſes can paſs the three Inſtances and be finally determined in the Term of a Year.

3. In fine, the *Code-Louis* is confined to the Method of proceeding alone. The eſſential Point, unqueſtionably, was to have a Law that ſhould be certain, and for that End to form a CODE, or a complete Body of clear and equitable Laws, to ſerve as a ſure and invariable Rule in every Caſe that might offer. This doth

† *Limiers* An. 1688. p. 109.

doth not appear to have hitherto been thought of in *France*. In ſome Parts of that Kingdom they follow the *Common-Law*, that is to ſay, Laws equally uncertain and imperfect; and in others, the *Roman Law*, where Incertainty no leſs prevails.

§ 111. The King of *Pruſſia* has gone much farther. 1. That Prince, whoſe Views are juſt and deep in all Sorts of Subjects, hath drawn up himſelf a Plan of Procedure entirely new, and laid down ſome general Principles that are the Foundation of the CODE-FREDERIC, which contains the moſt perfect Regulations that have ever yet appeared in this Matter. The diſtinguiſhing Excellency of this Method of Procedure is, that thereby all Cauſes are determined in the Space of a Year, even when they paſs the three Inſtances.

2. The King hath wiſely judged, that it was not enough to bring Suits to a ſpeedy Iſſue, if Proviſion were not made to leſſen their Number, and leave no room for Chicane. This could only be done by eſtabliſhing invariable and judicious Laws. Accordingly his Majeſty hath given Orders, that the numerous Ordinances, which were collected without Choice or Order, and which were diſperſed in a multitude of particular Regulations, ſhould be ranged in a Syſtematic Order, in order to compoſe of them a new *Body of Laws*, founded on Reaſon and the Conſtitutions of the

Country: A Work which no Sovereign in the Univerſe hath ever yet been able to execute, and the Detail of which we are now to give.

§ IV. The Academy of Sciences at *Berlin* had therefore the juſteſt Reaſons to perpetuate the Memory of this great Work, by a very handſome Medal, repreſenting on one Side the Head of *the King*; and on the other *Juſtice*, holding a Balance, whoſe Scales are ſuſpended very unequally, and the King putting his Scepter into one of them to put it in a perfect Equilibrium, with this Inſcription: EMENDATO. IVRE.

§ V. This Plan having juſtly excited the Attention of the greateſt Part of *Europe*, we have been ſollicited from ſeveral Quarters, and even by States, to give it the Public.

§ VI. The King having been pleaſed to conſent to its being printed, it is publiſhed as it is in the Inſtruction which the High Chancellor *Cocceji* received from his Sovereign, and contains in Subſtance the following XVIII. Articles.

I.

§ VII. The PLAN begins with laying down as a fundamental Rule never to be departed from, that the Offices of Preſident, Counſellor, and even the inferior Poſts, ſhall be entruſted to none but Men of Learning, Experience, and Probity, who are Proof againſt all Corruption; that the Advocates alſo, who

ſhall

ſhall be admitted to plead in the Colleges, be all Men of Abilities and Integrity.

II.

§ VIII. In conſequence of this general Rule none are to be propoſed to the King, for the Office of Preſident, but Men who have a ſolid Knowledge of the Theory of Laws, and who, by having previouſly practiſed in ſome College, are thoroughly verſed in the Practice of it. Enquiry is alſo to be made, if the Perſons propoſed have the Authority, and Activity, neceſſary for the Direction of Affairs, and accelerating the Diſpatch of them.

The King hath been determined by the ſtrongeſt Reaſons to make this Regulation; for in the Manner Things have been eſtabliſhed, the Buſineſs of the Court depends principally on the Preſident, who has the Direction of the Proceedings in every Cauſe, is to examine by himſelf all Complaints brought againſt the College, to reviſe at the End of every Month the Suits depending, and in general to have the Inſpection of the Counſellors and Advocates.

In making this Regulation, the King hath declared, that when the Body of Nobility of the Provinces, where the Colleges are eſtabliſhed, can furniſh Subjects endowed with the ſeveral Qualifications juſt mentioned, it is his Royal Will and Pleaſure, that they be employed preferably to all others.

For the reſt, the Function of a Preſident is regulated, and amply ſet forth in *Tit.* III. *Part.* I. of the *Code-Frederic.*

III.

§ IX. By Virtue of the ſame Plan, the Colleges of Juſtice are to be compoſed of ſuch Counſellors only, who are perfect Maſters of the Theory of Law, who have practiſed ſome Years, and who are, beſides, of known uncorruptible Probity.

And to the End that young Students in Law may alſo learn the practical Part, and thereby be qualified for exerciſing, one Day, the higheſt Poſts of the Law, the King hath been pleaſed to eſtabliſh, in all the Colleges of Juſtice, a certan Numbers of Auditors and Referendaries. Theſe laſt, who are not received till after being duly examined, act as Joint-Reporters, but without having any deciſive Voice. They are employed alſo in Commiſſions, to form them inſenſibly for the Adminiſtration of Juſtice. It is from this kind of Seminary that Perſons are to be taken to fill up the Poſts of the Law, as they become vacant in the Provinces.

As it is abſolutely neceſſary for the Execution of this Plan, that the Counſellors be not diverted from their Work by Employments foreign to it, the King hath ordered (a) That no Counſellor of a College of Juſtice can at the ſame Time fill any other Poſt, nor be employed

ployed in any Commiſſion at a Diſtance from the Tribunal is to which he belongs. (*Cod. Frid. Part. I. Tit. VI.* § 11.)

(b) Farther, the Counſellors are expreſly prohibited to take from the Parties any Preſent in Money or Proviſions, directly or indirectly, either before or after paſſing Sentence, or to ſuffer any Gratification to be ſo much as barely promiſed them. (*Ibid. Tit. I.* § 16. *& ſeq.*)

(c) The Counſellors are not to partake of the Fees, whatever Name they may have. Even the Dues belonging to the Commiſſions which they are employed in, all go to the Fee-Cheſt. (*Ibid. Tit. VI.* §. 25.)

(d) Thoſe who enter an Action perſonal or real, againſt a Counſellor, are not obliged to bring it before the Tribunal of which he is a Member. They have Leave to proſecute him before the Privy-Council of Juſtice at *Berlin*, where the Defendant will be obliged to give in his Anſwers, to the end that the Plaintiff may have no Ground of Apprehenſion that the Judges will favour their Brother, and that the College may not in the leaſt be ſuſpected of Partiality. (*Part. I. Tit. VI.* §. 21.)

(e) Another moſt ſalutary Regulation which the King hath made on this Head is, that Counſellors burden'd with Debts ſhall be immediately diſmiſſed; eſpecially when there is Ground to fear that Creditors will be obliged

to

to compound for leſs than their Claims amount to.

See farther, *Tit. VI. Part. I. of the Code-Frederic*, wherein the Office of Counſellor properly conſiſts.

IV.

§ x. As it is in the Power of the Advocates, more than any, to accelerate the Determining of Cauſes, it is enacted,

1. That no Advocates ſhall be admitted to plead in the Superior Courts, but ſuch as are of good Families, and who, after having acquired a thorough Knowledge of Law, have practiſed at leaſt four Years either in the inferior Courts, or with ſome celebrated Advocate; and in order to form a better Judgment of his Capacity, he is not to be received till after he has undergone an exact and rigorous Examination. *(Part. I. Tit. XIV. §. 4.)*

2. It is enacted, that for the future the Advocates ſhall alſo do the Buſineſs of Sollicitors, and have the Direction themſelves of all the Cauſes they undertake.

In order to this the King hath thought proper to lay aſide the Attorneys and Sollicitors, who, beſides ruining the Subjects by the exorbitant Dues they exacted from them, were the great Cauſe of the Mal-Adminiſtration of Juſtice, and of all the Diſorders that have crept into the Bar. They are forbid, under Pain of being ſent to work on the Fortifications,

tions, to meddle for the future in any Proceſs. By means of this Regulation of the King, we no longer ſee Appearances, and Expences multiplied without any Neceſſity; nor two Perſons retained on the ſame Side reciprocally imputing to one another the Faults that were committed, and the bad Succeſs which which was the Conſequence thereof.

V.

§ xi. As it often happens that the Officers of the Fiſc exceed the Bounds of their Commiſſion, and in moſt of the Provinces harraſs the King's Subjects a thouſand Ways; his Majeſty, to remedy this Abuſe, has prohibited the Officers of the Fiſc, under pain of being broke.

1. From bringing any Information againſt the Nobility, or againſt his other Subjects, till they have firſt thoroughly examined the Nature of the Caſe, and propoſed it to the *Office of Juſtice*, whoſe Orders they are obliged to wait for, to commence the general or particular Proſecution aſſigned them to carry on (*Cod. Frid. Part. IV. Tit. V.* §. 1. 2. 3. 4.)

2. That the Subject may be no longer moleſted by the Officers of the Fiſc, who often intervened in Suits, or brought Actions themſelves under Pretext of maintaining the Intereſt of the King and the Public, it is ſpecified in the *Code-Frederic*, what Matters fall under the Cognizance of the Fiſcal, and the Caſes where

where he has a Right to intervene. (*Ibid.* §. 12. *et ſeq.*)

3. It is farther enacted, that the Officers of the Fiſc who ſhall bring an unjuſt Action, or carry a trifling Cauſe through the three Inſtances, ſhall be condemned to pay Coſts of Suits out of their own Effects. (*Ibid.* §. 18.)

4. The King hath intimated at the ſame time to all the Colleges of Juſtice:

(a) "That thoſe who at his Acceſſion to "the Throne enjoyed any of the Dues be- "longing to the Crown, which are known in "*Germany* by the Name of *Regalia*, are to "remain in Poſſeſſion thereof, and the Offi- "cers of the Fiſc not be permitted to trouble "them in any Manner.

(b) "The Officers of the Fiſc are prohi- "bited, under pain of being broke, and "even ſuffering corporal Puniſhment, from "uſing Chicane with any of the King's Sub- "jects, and particularly the Nobility, and "from oppreſſing them by vexatious "Suits.

(c) "In fine, the King declares, that when "the Thing in Debate is of little Importance, "his Majeſty will rather recede from and loſe "his Right, than ſee his good and faithful "Subjects harraſſed by Law-ſuits; becauſe in "ſuch Caſes the Loſs is inconſiderable to the "Sovereign, whereas the Vaſſals and Subjects, "who ſerve the King with their Lives and "Fortunes,

" Fortunes, are often entirely ruined by ſuch " Suits." (*Ibid.* § 18.)

Hiſtory furniſhes few Examples of ſuch Generoſity, which, yet, is the higheſt Virtue that can adorn a King.

VI.

§ XII. To come to the Proceſſes themſelves: The King's Plan bears, That the Advocates ſhall have Notice given them not to undertake all ſort of Suits indifferently, but to examine maturely, before they commence an Action, if the Cauſe be juſt; and for that End to take exact Information of the Nature and Circumſtances of the Facts which ſerve for the Foundation of the Action.

The Manner of taking theſe Informations is amply particulariſed *Tit. XIV.* § 10. *of the Code-Frederic.* The Abridgment of it is as follows.

1. The Advocate muſt carefully examine the Parties themſelves whom he is to ſerve, or the Deductions they deliver in to him; and if the Cauſe doth not appear to him to be founded in Law, he is not to undertake it.

2. If there be any Defect in the Inſtructions given him, and he have any Doubt concerning ſome Articles which appear not to him ſufficiently clear, he muſt demand more ample Information.

3. He is to examine, whether the Tribunal before which he is to plead, be a competent Judge

Judge of the Cauſes he would bring before it, and of the Perſons againſt whom the Action is brought.

4. He is alſo to inform himſelf whether the Parties be in full Poſſeſſion of their Rights, or if they be ſtill but Minors; and in the latter Caſe, he muſt, before he commences the Suit, take care to have Tutors appointed for the Plaintiffs or Defendants that have none.

5. He is, farther, to inform himſelf, if the Plaintiff and Defendant have Partners who are engaged or intereſted in the Affair.

6. Above all things he muſt examine with the greateſt Attention the Letters, Documents, and Titles laid before him, that he may be able to judge if they be ſufficient to found a Complaint on.

7. In defect of Pieces and Documents, he muſt acquaint his Client in what Manner to make his Proof.

8. When the Foundation of a Complaint is to be juſtified by Witneſſes, the Advocate, before he enters his Action, is obliged to inform himſelf of the Name, Habitation, and Quality of the Witneſſes, and in that manner prepare his Evidence; becauſe no farther Time will be allowed to the Party who is to furniſh the Proof.

9. After the Advocate hath taken all theſe Informations, he muſt take care (N. B.) to draw

draw up a Protocol thereof, and to furniſh himſelf with Procurations from all the Parties.

10. In fine the Advocate muſt draw up the introductory Petition with all the Care of which he is capable, and form his Demand on the Premiſſes there laid down. The Advocate for the other Party is alſo charged to draw up his Exceptions thereto in a ſolid and circumſtantial Manner.

11. For the reſt; that the Tribunals may certify themſelves that the Advocates, before commencing the Proceſs, have taken all the Precautions juſt mentioned, it is enacted, that as often as either of the Parties occaſion Incidents which would not have taken place if the Tenor of the Ordinance had been obeyed, the Preſident is impowered to aſk the Advocates for the Protocol of the Inſtructions they have received, to examine it, and to puniſh thoſe whom he finds to have neglected taking any Information preſcribed by the Regulation.

By means of theſe Informations which the Advocates are obliged to take, the King hath fully remedied many Inconveniencies which were inevitable in the ordinary Method of proceeding.

1. The greateſt Part of the Incidents which retarded a Proceſs, are wholly extirpated and prevented.

2. The

2. The Advocates have no longer Occaſion to deſire a Delay, under pretence of taking a more ample Information.

3. When a Cauſe is inſtructed at firſt in the Manner preſcribed by the Ordinance, the Writings which are to be drawn for the ſecond and third Inſtance, cannot be long, nor give the Advocate much Trouble.

VII.

§ XIII. The King's Plan imports, that before Judgment be given, and even from the time of appointing the Parties to be firſt heard, a Counſellor of the College be charged to try to bring about an amicable Accommodation between them, and that even if he ſhould not ſucceed, the Parties and their Advocates ſhall be put off to a ſecond Hearing, to ſee if in this Interval they can make it up.

The King hath rightly judged, that the Number of Law-ſuits would be leſſened one half, if the Courts of Juſtice would take the Trouble to endeavour to accommodate Matters between the Parties before their Minds be ſoured by tedious Suits; eſpecially when the Advocates employed are Men of Probity, who, entering into the Views of the King their Maſter, aim only to ſerve their Clients, and are ſo diſintereſted and honourable, when a Cauſe appears to be litigious, to acquaint the Parties therewith.

As

As Experience ſhews that at the beginning of a Suit the Parties are commonly inflexible, and refuſe to liſten to an Accommodation, the King hath thought fit, that, after the Counſellor appointed for that end ſhall have tried to reconcile the Parties, and laid before them and their Advocates both Sides of the Queſtion, a Delay of ſome Days ſhall be given them to reflect coolly on what hath been repreſented to them, and to make it up between themſelves.

This Juſtice muſt be done to the Tribunals and Advocates of the Dutchy of *Pomerania*, that they truly diſtinguiſh themſelves above all others by their Endeavours to reconcile the Parties, and the Skill they employ for that Purpoſe.

In *Tit. Part. III. of the Code Frederic* may be ſeen, what Meaſures the Judges are to take to bring about an Accommodation, and in what Manner the Advocates who ſucceed therein, are to be recompenced.

VIII.

§ XIV. The King hath laid it down as a fundamental Article of his Plan, that the Advocates be prohibited, under pain of loſing their Employment, from aſking or receiving, under any Pretence whatever, their Fees and Expences before the Cauſe be definitively judged in all the Inſtances; and that the Fees of the Advocate be moderated and regulated by the Sentence.

The King hath at the ſame Time enacted, that the Advocates who ſhall defend a bad Cauſe, or who ſhall be convicted of multiplying Proceedings uſeleſly, of protracting a Suit, of heaping up in the Writings they preſent Repetitions and Things foreign to the Subject; ſhall be condemned by the Sentence not only to forfeit their Fees to the uſe of the Fee-Cheſt, but alſo to be puniſhed arbitrarily, according to the Exigence of the Caſe.

It is eaſy to conceive that this Regulation ties up as it were, the Hands of the Advocates, who have it no longer in their Power to protract Cauſes, to lead their Clients through every quibbling Detour, and fleece them by exacting exorbitant Fees.

On the contrary, an Advocate who would be paid his Fees and Expences, muſt guard againſt every frivolous Incident that might delay the Proceſs, and inſtruct and puſh the Cauſe in ſuch Manner as to obtain a Definitive Sentence as ſoon as poſſible.

Beſides, if he would ſecure his Fees and Salary, he muſt take care not to undertake a bad Cauſe, to keep at the greateſt Diſtance from any Quibble, and to be conciſe in the Writings he draws; otherwiſe he muſt expect that the Money for his Attendance will be forfeited to the Free-Cheſt, and even he himſelf be puniſhed as ſhall ſeem proper.

In

In fine, as the Advocates are obliged, when a Cauſe is brought ſo far that Judgment is ready to be given, to give in with the Writings a particular Account of their Expences, and Fees, they have no longer an Opportunity to exact upon the Parties; becauſe the *Reporter* is charged to reviſe and moderate the Accounts of the Advocate, and the Sentence ſpecifies the Sum adjudged to him.

IX.

§ xv. The Preſidents and Counſellors who ſerve in a College of Juſtice, as well as the inferior Officers, are forbid to accept of any Fees from the Parties, whatever Denomination may be given them. All the Fees are to be put into a Cheſt, where an exact Account is kept of them.

Every one knows that there uſed to come from every Province of the Kingdom innumerable Complaints againſt the immenſe Expence the Parties were put to for the Commiſſions and the Extracts of the Proceedings; the People murmured no leſs on account of the notorious Partiality of the Judges and Commiſſaries, than of their various Extortions. This Abuſe hath been fully remedied, by aſſigning the Counſellors and Subalterns a ſtated Sum to be paid out of the Fee-Cheſt, in which the Revenues of one Year are always to remain in reſerve: And ſince things have been put on this Footing, it ought

to be very indifferent to them, whether there come little or much into this Cheſt, as they can neither gain nor loſe thereby.

There is not even to the Expence of the Commiſſions, but what are paid out of this Cheſt, which is afterwards reimburſed the ſame by the Parties; ſo that it is not poſſible for the Commiſſaries to exact upon the Parties, nor for theſe to corrupt the Commiſſaries.

X.

§ XVI. In all the Colleges where Juſtices is adminiſtred, the Extracts of the Sentences paſſed are made out to the Parties without their paying any thing.

Before this new Eſtabliſhment, no one could have his Extracts without paying ready Money. But as the Parties were not always able to pay it, nor the Advocate in a Humour to advance it, they lay in Chancery ſometimes whole Months. It happened alſo from this Cauſe, that when any inferior Tribunal was petitioned to *report* any Affair, it often was not done for a whole Year, and the Proceſs remained in Suſpenſe all that Time; not to mention many other Inconveniences reſulting from this manner of acting.

By Virtue of the new Conſtitution, the Petitions are diſtributed to the *Reporter*, Judgment given on them, and the Extract thereof made out, at the end of three or four Days at fartheſt. *See* § 17 *and* 18. For this end a Paper

per is ſtuck up every Day at the Door of the Court, ſpecifying, Article by Article, the Cauſes of which Extracts are made, that every Advocate may receive his own. In caſe he ſhould not do it in the Forenoon, the Meſſengers of the Court carry them home to him in the Afternoon at his Expence.

In the mean time, that the Fee-Cheſt may not be defrauded of its Dues, the Advocates are obliged to be anſwerable for them, and even to advance the Money beforehand; but only (N. B.) till the *Definitive* of each Inſtance. And when theſe Advances are allowed to the Advocate by the Sentence, the Parties which refuſe to reimburſe him, ſhall be forced to it by diſtraining their Goods, and the Advocate not be obliged to be at any Expences to recover his Money.

The Advocates have no Reaſon to complain of being obliged to make theſe Advances. On the one Hand they are not very conſiderable, the Extracts being confined to the two principal Pieces, which he muſt ſignify to the Party; on the other, every Inſtance is finiſhed in three or four Months; to which may be farther added, that neither the Charges of the Commiſſion, nor of examining the Evidences, concern the Advocates.

XI.

§ XVII. The King hath corrected another Abuſe no leſs grievous to the Publick, which con-

conſiſted in preſenting Petition after Petition on the ſame Subject. To remedy this it is enacted, that when the Parties ſhall have any thing to demand (N. B.) which regards the inſtructing the Proceſs, they ſhall not do it for the future in Writing, but content themſelves with propoſing it verbally in open Court, and in preſence of all the Advocates.

It is inconteſtable, that by the old Conſtitution the Writings of a Proceſs were multiplied in ſuch Manner, that not without great Difficulty could one get at the principal Pieces. The *Reporter* was obliged to perform the irkſome Taſk of reading whole Volumes, and reviewing innumerable uſeleſs Pieces that did not touch on the Point.

Another ſtill greater Grievance was, that 1. The Parties frequently employed ignorant Attorneys, or Fellows out of Buſineſs, who had no Idea either of the Theory or Practice of the Law, to draw their Petitions; from whence it followed, that the Fact and State of the Cauſe were never rightly laid down, and that moſt of the Demands were contrary to Law and the Tenor of the Briefs; which yet did not hinder ſome greedy Advocate from putting his Name to the Bottom of the Petition, provided only he were paid for it. 2. Theſe Petitions were afterwards delivered in to a Counſellor previouſly gained over, who precipitately pronounced a Decree thereupon,

dictated

dictated by Intereſt rather than Juſtice. 3. It was inevitable after this but ſuch Decrees would be revoked on the Repreſentations of the adverſe Party; ſo that very often in the ſame Cauſe there was Decree againſt Decree; and formerly Actions were brought, carried on, and renewed by ſeveral immediate Reſcripts, which the Court had been ſurpriſed into, or which had been extorted from it. 4. In fine, as theſe Requeſts could not be drawn, preſented, extracted, and ſignified to the Parties without the Loſs of much Time and Money, they ſerved only to perpetuate Suits, and ruin the Subject.

The Verbal Remonſtrances enjoined by the King prevent all theſe Diſorders. It is proper however to take Notice, that the Plan preſuppoſes,

1. That the Advocates propoſe Verbally only what relates to the inſtructing of the Proceſs; ſuch as, the demanding farther Time, the delivering in a Writing, the obtaining the Publication of an Inqueſt, or the Execution of a Sentence, *&c.*

2. The two Parties are ſuppoſed to have their Mandataries, authoriſed by Procurations which are to appear in the Writings of the Proceſs. Till they have complied with this Condition all Demands muſt be made in Writing.

3. Every Advocate muſt appear, either in Perſon, or by his Subſtitute, at the Hearings, under pain of forfeiting Two Rixdollars.

4. Every

4. Every Advocate muſt declare Verbally what he hath to demand.

5. If the Advocate of the adverſe Party hath any Thing relevant to oppoſe, he is obliged to do it immediately and in few Words.

The Plaintiff is farther allowed, if he thinks proper, to reply; and the Defendant to duply.

6. Double Minutes are taken of theſe verbal Remonſtrances, one of which is joined to the Writings of the Proceſs, together with the Decree which the Judges gave thereupon.

7. After that all the Advocates have ſucceſſively propoſed their Demands, and are withdrawn, the Judges have the Writings laid before them, if thought neceſſary, and the Decrees are immediately drawn up, either by the whole College, or by the ſecond Chamber, when the College is compoſed of two Senates; and if the Demands or Exceptions of any Advocate be found contrary to Law, or to the Tenor of the Briefs, he is fined from 2 to 5 Rixdollars.

8. When an Advocate finds himſelf unable to reply directly to a Remonſtrance, and aſks permiſſion to conſult firſt the Writings of the Proceſs, the thing is not refuſed him, but he muſt give in his Anſwer, without farther Delay at the next Hearing.

9. The Decrees which are given at the end of each Sitting, are read publickly at the next Hearing in preſence of all the Advocates.

10. The

10. The Advocates who think themſelves aggrieved by any Decree are at Liberty to make their Remonſtrances immediately after the Publication of the Decree; but what is afterwards enacted upon theſe Remonſtrances, has the Force of a final Determination.

This Manner of proceeding is, as it were, the Soul of the new Conſtitution, and nothing contributes more efficaciouſly to the ſpeedy Deciſion of Cauſes.

(a) For as the Advocate of one Party cannot demand any thing of the Judges but in preſence of the Advocate of the adverſe Party, every Ground of Chicane or Quibbling is effectually deſtroyed; and the Ways of Surreption and Obreption, formerly open to thoſe who preſented Petitions in Writing, are intirely ſhut up to the Pleaders; and as the Decrees are not given but upon Knowledge of the Cauſe, there is no longer room to apprehend contradictory Decrees in the ſame Proceſs. (b) The Parties are no longer obliged either to propoſe in Writing what they imagine will be of Service to their Cauſe, nor to wait long for a Reſolution, nor to put themſelves to any Expence for the Dues of the Extracts, theſe verbal Remonſtrances coſting them nothing, and each Party receiving his Decree at the End of three Days. (c) The Acts of a Proceſs are not multiplied by ſuperfluous Petitions, and conſiſt only of the four

principal Pieces of Writing. There are very few Proceſſes wherein the Writings will exceed in each Inſtance, the Thickneſs of two Fingers Breadth which is undoubtedly a great Eaſe to the *Reporter*, who is obliged to read all the Pieces from End to End.

XII.

§ XVIII. In ordering the Advocates to propoſe verbally whatever regards the bare inſtructing of a Cauſe, the King hath remedied at the ſame Time the deſtructive Abuſes which People had given into in relation to the Petitions that they were neceſſarily obliged to preſent in Writing as containing the Ground of the Suit. This is the Subject of a particular Ordinance, which regulates the Manner wherein the Preſident is to diſtribute theſe Requeſts, and the Reporter give an Account of them.

It is well known, that if there were great Abuſes committed in reference to the Petitions which regarded only the inſtructing of a Cauſe, there were much greater committed in thoſe which concerned the very Eſſence thereof. Theſe principal Pieces, on which the Deciſion of a Cauſe depends, were drawn by ignorant Attorneys, who having no Idea of the Laws, were incapable of forming a proper legal Concluſion. Oftentimes the Attorney, inſtead of drawing a Petition himſelf, left it to young Students in Law, or other idle Perſons, whoſe Preſumption ſerved them in room of Knowledge.

The

The *Code-Frederic* has prevented theſe Diſorders by enacting *(Part. II. Tit. 4.)*

1. That Attorneys ſhall forbear, under pain of being ſent to work on the Fortifications, from drawing any Petition; that being left wholly to the Advocates, who ſhall therefore alone be anſwerable for their Contents.

2. That theſe Petitions ſhall be delivered to the Perſon who keeps the Records of the Court, and to no other.

3. That the Keeper of the Records ſhall every Day ſend to the Preſident the Petitions which have been given in, endorſed; and that the Preſident ſhall without Delay diſtribute them to the Counſellors of the College.

4. That as ſoon as the Reporter is named, a Copy of the Writings of the Proceſs ſhall be ſent him, with the Petitions, that he may form his Judgment of the Cauſe upon a proper Knowledge thereof.

The Counſellors are charged after this,

5. To make in Writing a ſhort Extract of the Petition; whereupon,

6. They propoſe the Affairs next Day, in full Senate, and draw up the Sentence which is to be given.

7. This Decree is immediately ſent to the Chancery, there to be regiſter'd:

8. And the Extract is to be again reviewed the ſame Day by the Counſellor who gave the Decree.

9. It is afterwards to be engroſſed by the Clerks of the Chancery.

10. We have ſeen § XVI. that as ſoon as the Sentence is thus iſſued, the Advocates have Notice given them by a Paper poſted up, that they may come and receive their Extracts.

By Virtue of theſe Regulations, the Petitions are anſwered, and decreed in the Space of four Days, at fartheſt; the Parties are put to no Expence to ſolicit them, or to have the Decrees thereon intimated to them; and as no Decree is pronounced without conſulting the Writings of the Proceſs, it is ſcarce poſſible that one Decree ſhould claſh with and vacate another.

XIII.

§ XIX. The King hath ordain'd that all the Appeals and Remedies of Law be received indiſcriminately in the ſecond and third Inſtance; whereby the Oath which one was obliged to take, before he could be received as an Appellant, and the rogatory and compulſory Letters become uſeleſs, as well as thoſe which were formerly known in *France*, and are to this Day in *Germany*, under the Name of *Apoſtoli*.

The ancient Conſtitution was attended with this Inconvenience, that ſometimes Months and Years were elapſed, before the ſingle Queſtion was decided, Whether the Appeal ſhould be received or rejected? The Parties after

after being refuſed twice, thrice, or oftener, reſolved to apply to Court, and often obtain'd by a Reſcript of the Council what the ordinary Judges had refuſed them.

It is ſhewn in the *Plan of Ordonnance for the Tribunal* *, *Tit.* IX. § 2. how difficult it was formerly to proſecute a Suit which had been carried in the third Inſtance before that Tribunal. It is well known, that ſometimes whole Years elapſed before the Affair could be begun.

The King had therefore the ſtrongeſt Reaſons, to order that all Appeals ſhould be received; becauſe the Proſecution in one Inſtance requires at moſt but four Months; and it imports the Parties much more to have the principal Affair decided in that ſhort Space of Time, than to diſpute for Years to know if the Appeal be admiſſible.

For the reſt; what is ſaid here is to be underſtood of thoſe Cauſes only, which are of ſuch a Nature, that they can be carried by Appeal to the ſecond and third Inſtances. Whenever, on the contrary, it is an Affair where neither Appeal nor Reviſion take place, the Judge of the firſt Inſtance is bound to proceed to the Execution of the Sentence without any regard to Appeal.

* This relates to the Supreme Tribunal eſtabliſhed at *Berlin*, which pronounces a final Sentence without Appeal, in Cauſes that could not paſs the three Inſtances in the Provinces.

XIV.

§ xx. The King hath aboliſhed of himſelf another very deſtructive Cuſtom, which beſides the extraordinary Charges it occaſioned to the Parties, contributed greatly to protract Suits. This was the ſending the Writings of a Cauſe to ſome Univerſity, which afterwards returned them with its Deciſion thereon, and the Sentence ready drawn up.

For, not to mention that the Univerſities never ſent them back ſoon, but ſometimes kept them above a Year; it is well known, that the Number of the Members of a Court of Juſtice who have Voices, exceeds that of the Profeſſors who compoſe the Faculty of Law in an Univerſity. Theſe Faculties never appoint *Joint Reporters*, and ſometimes paſs over Cauſes very ſlightly. Beſides, Experience hath ſhewn us, that there wants among them Men as well acquainted with the practical Part as with the Theory of Law; from whence it often happened that we were obliged to ſuppreſs and reſcind from the Writings of the Proceſs, theſe foreign Deciſions, as null and of no Validity; which ſerved not only to prolong the Suit, but occaſioned double Expence to the Parties.

Inſtead of ſending the Writings of a Proceſs to ſome Univerſity, the King hath therefore thought proper to erect Courts of Juſtice, which in ſome Places are divided into three Chambers

Chambers or Senates, and the Suits paſs there the three Inſtances, with little Expence and little Formality.

In other Places the King hath only formed two Senates; and in this Caſe the third Inſtance is brought before the Tribunal mentioned in the Note on § XIX.

As to the ſmall Provinces, which require only one Senate, the Inſtance of Appeal muſt be inſtructed by the Judge *à quo*, who ſends afterwards the Writings by way of Commiſſion to the neareſt Regency, to decide the Cauſe. When any of the Parties think proper to have the Sentence reviſed, or to have it tried in the third Inſtance, the Writings are in like manner ſent to the ſecond Senate, of the ſame Regency or to *the Tribunal*, ſuppoſing the Regency to have but one Senate.

It is, beſides, left to the Choice of the Party who demands a Reviſal of the Sentence to carry, if he thinks proper, the third Inſtance to the Tribunal above-mentioned.

As the Courts of Juſtice are always compoſed of Six, Eight, to Ten Counſellors, who are all Men of Experience, a *Reporter* and *Joint-Reporter* is appointed for every Cauſe; and as the Reaſons of the Deciſions are always inſerted in the Sentence, (which is to be prepared in a Fortnight) it is inconteſtable, that the King's Subjects may promiſe themſelves better and ſpeedier Juſtice from a numerous and reſpectable Senate, than from a foreign Univerſity.

XV.

§ XXI. According to the King's Plan, all Suits for the future even when they paſs the three Inſtances, muſt be finiſhed in the Space of a Year. After the third Inſtance, there is no Appeal or farther Remedy, on any Pretence whatſoever.

Before the new Reform, People did not confine themſelves ſcrupulouſly to this Rule. Four or more Inſtances were ſometimes allowed in the ſame Suit; and when theſe were all paſſed, they ſtill found means to extort from the Court Commiſſions for reviſing the Proceſs.

The new Conſtitution remedies all theſe Inconveniencies. On one hand, we ought naturally to ſuppoſe that the Advocates have fully inſtructed the Cauſe in the firſt Inſtance; and that in caſe they have omitted any thing, they have ſupplied it in the ſecond and third. On the other Hand it is to be preſumed that what the three Chambers, compoſed of upright and able Men, have pronounced to be juſt, is really ſo. Unleſs, therefore, we would render Proceſſes endleſs, it doth not appear that any one hath reaſon to complain, if after paſſing through the three Inſtances, he be denied a further Hearing.

The King had therefore very ſtrong Reaſons for eſtabliſhing this Rule, *That the Proceſſes ought to be at an End after having paſſed through*

through the three Inſtances, and even to extend it to Caſes where two concurring Sentences are ſet aſide by the Sentence of the laſt Inſtance.

It indeed ſeems hard, that a Perſon ſhould loſe by a third Sentence, what he had gain'd by the two preceding. But the King hath prevented this Appearance of Injuſtice by a Regulation, which imports, that after reading in Court the Relations of the *Reporter* and *Joint Reporter*, and the Opinion of the Court ſeems to be, that the two former Sentences ſhould be ſet aſide; in this Caſe the Writings of the Proceſs are to be ſent to all the Counſellors ſucceſſively, after however taking from them the Reports made thereupon, which are to be kept ſeparate: And after the Counſellors ſhall have read the Writings, and put their Opinions with their Reaſons for the ſame in Writing, they are to deliver them, ſealed up to the Preſident, who cauſes theſe Opinions to be read in open Court, and then proceeds to pronounce Sentence according to the Majority of Voices.

As this laſt Solemnity is at bottom a fourth Inſtance, it is juſt that the Deciſion ſhould be without Appeal; eſpecially as it is to be preſumed, not only that the Parties have ſpared nothing to juſtify and clear up their Rights at the former Hearings, but alſo that the Judges of this laſt Inſtance have examined the Affair more maturely.

After

After all, as there is no Conſtitution ſo perfect, but it is attended with ſome Inconvenience, it is without Queſtion infinitely better, that one or two Particulars ſhould ſuffer ſome wrong, which may be done them on ſuch an Occaſion, than to allow a fourth Inſtance, which has ruined and would ſtill ruin whole Families, *&c.* What *Tacitus* ſays may be juſtly applied on this Occaſion: *Privatas injurias utilitate publica penſari.*

XVI.

§ XXII. The King knew very well that a proper Ordinance might indeed ſerve greatly to abridge Suits; but that their Number would not be leſſened while the *Roman Law*, which is ſo confuſed, prevailed; or while particular Laws, and eſpecially the innumerable Multitude of Edicts and Statutes, remained in Force. His Majeſty, therefore, hath given Orders for compiling a new Body of Laws wholly founded on right Reaſon and the Conſtitution of the Country.

This Deſign hath been executed, and the firſt Part thereof already publiſhed, under the following Title:

A PLAN of the

Corpus Juris FRIDERICIANUM.

That is to ſay, *A Body of Laws for the Uſe of his Majeſty the King of Pruſſia's Dominions, founded*

founded on Reaſon and the Conſtitution of the Country. This Plan begins with laying down certain general Principles, which flow from the Light of Nature, and are in ſome manner hid in the *Roman Law*; and afterwards the ſame Principles are made uſe of to range the *Roman Laws* in a natural Order, and reduce them into the Form of a Syſtem. From theſe Principles the natural Conſequences are drawn, the Subtleties and Fictions of *Juſtinian's Inſtitutes*, and in general whatever is not applicable to the *German* Conſtitution, are laid aſide; the Problematic Queſtions and doubtful Laws in the *Roman* Code are decided; and by theſe means a certain and univerſal Law for all his Majeſty's Dominions is eſtabliſhed.

XVII.

§ XXIII. The King hath taken wiſe Precautions to put the preſent Conſtitution on a firm Footing, and to prevent the Courts of Juſtice from finding Means, in Proceſs of Time, to alter it in whole or in part.

With this View his Majeſty hath been graciouſly pleaſed to ordain, that every three Years there ſhall be a Viſitation of all the Courts of Juſtice by a Miniſter of State, who ſhall examine if the King's Plan be exactly followed, and the Order thereby preſcribed, obſerved in Law-Suits. Suppoſing that any Complaints be brought againſt the Judges, and that they be accuſed of Mal-Adminiſtration

tion of Juſtice, or of protracting Suits, the Miniſter of State is farther charged to take Cognizance of the Abuſes and to remedy them. This Precaution is apparently a very efficacious means to fill the Judges with a continual Attention to their Duty, and a juſt Apprehenſion of the Conſequences of failing in it.

XVIII.

§ XXIV. It is eaſy to imagine, that the general Plan which hath been formed for abridging Law-Suits, could not be put on a ſolid and durable Footing, without regulating, at the ſame time, on this Plan all the different Parts of the Proceedings, and retrenching in each Article what might protract a Cauſe. Accordingly this End hath been always kept in View in the ſeveral *Tit: of the Code Frideric.*

As it is not poſſible to give a full Account here of all that has been ordained to this Purpoſe, we muſt content ourſelves with mentioning the principal Heads.

I. The *Code* contains a particular Ordinance that points out the Manner in which Law-Suits ought to be introduced and carried on in the Courts of Judicature. *Cod. Frid. Part. II. per tot.*

II. The King has diſtinguiſhed, by another Regulation, the Caſes that come under the Juriſdiction of the Courts of Juſtice, from thoſe that

that properly belong to the Courts where Matters relating to the Military and the Demaines are to be tried and judged; which effectually prevents the frequent Claſhings of Juriſdiction, as fatal to the Subjects as to Juſtice.

III. The *Code* preſcribes to inferior Judges ſhort Forms of Proceſs, according to which a Cauſe depending may be determined in a few Weeks, in the firſt Inſtance.

IV. It is expreſly prohibited to preſent a Petition to any Court whatever, which has not been drawn up in the manner preſcribed in § IX. *Cod. Frid. Part. III. Tit. VI.* § 2. *& ſeq.*

V. He that is twice non-ſuited in an Action which he brought *in poſſeſſione ſummariſſimâ*, cannot afterwards apply for Relief by bringing *Actionem poſſeſſoriam*, but muſt bring *Actionem petitoriam*.

The Parties, whether Plaintiff or Defendant, are allowed to join the *Petitoriam* to *poſſeſſioni ordinariæ*, and the adverſe Party is obliged to give in his Anſwer thereto; otherwiſe the Judge may pronounce upon the *Petitoria*, even *in default*, according to the Circumſtances. *Cod. Frid. Part. III. Tit. VI.* § 20.

VI. The Citations, and the manner of their being executed, have been ſo regulated, that no Diſorder or Delay can poſſibly reſult therefrom.

from. *Cod. Frideric. Part. III. Tit. VIII. & IX.*

VII. If any Perſon, before contending, pleads, by way of Exception, *a Cauſe determined*, the Judges are to enquire, without Delay, into the Merits of ſuch a Plea, and if his Exception is ſet aſide, the Judgment is without Appeal. The Defendant however, while he is contending, is at Liberty to offer anew the ſaid Exception and other peremptory ones. *Cod. Frid. Part. III. Tit. X.* § 10.

It is laid down in a plain and particular Manner, proper to prevent all Diſpute, what the Parties are to obſerve, when obliged to oppoſe that Exception, which ſo often contributed to prolong Suits, *viz.* that ſeveral Perſons are intereſted in the Cauſe. *Cod. Frid. Part. III. Tit. X.* § 24.

Juſt Meaſures have likewiſe been taken to prevent the other Exceptions, ſuch, for Inſtance, as the *Exceptio Declinatoria*, *Exceptio Spoliationis*, or the *Exceptio Attentati*, from putting a Stop, for the future, to the Deciſion of the principal Cauſe.

IX. The Cuſtom of pleading upon general Topicks, without coming to the fundamental Point, is aboliſhed. The Defendant is held to anſwer, Article by Article, to all the principal Parts of the Complaint; and if ſome of them ſhould happen to be branched out into different Circumſtances, he muſt anſwer ſeparately

ly to each; and explain, in a clear Manner, without Equivocation or Subterfuge, what he confeſſes, and what he denies in the Cauſe under Conſideration, whether with regard to the Fact itſelf, or to the Circumſtances alledged by the Plaintiff. *Cod. Frid. Part. III. Tit. XI.* §. 3. 4.

x. The King has renewed the whole Severity of the Laws againſt falſe Repreſentations (*pænas inficiationis*) and ordered that the Parties and Advocates who ſhall be convicted of having advanced falſe Facts or Circumſtances, be puniſhed with the utmoſt Rigour. *Cod. Frid. Part. III. Tit. XI.* §. 7.

xi. All the Difficulties that formerly occurred upon Occaſion of the Introduction of an Inſtance, Reconvention, Intervention, and Revival of the Inſtance, have been totally removed, the Code preſcribing clearly the manner of proceeding in theſe different Caſes. *Cod. Frid. Part. III. Tit. XII. XIII. XIV. XV.*

xii. All the different Oaths known at the Bar under the Names of *Juramentum Calumniæ, Appellationis, Reviſionis, Malitiæ*, have been aboliſhed, unleſs the Judge has particular Reaſons to tender ſome of theſe Oaths to one of the Parties, and in that Caſe the Deciſion ſhall be without Appeal. *Cod. Frid. Part. III. Tit. XVI.*

When it appears upon the Concluſion of a Proceſs, that a Man, notwithſtanding the Oath he

he has taken to the contrary, has not carried on the Proſecution but with a View of Defamation, an extraordinary Proſecution is commenced againſt the Calumniator for the Crime of Perjury. *Cod. Frid. Part. III. Tit. XVI.* § 8.

XIII. It is well known that the Manner of aſking and proſecuting Defaults, and the Reſtitutions in full conſequent thereto, contributed greatly to the ſpinning out of Law-ſuits. In order to prevent theſe Inconveniencies, the *Code-Frideric* has determined, in a very particular Manner, all that ought to be obſerved upon that Head.

(a) The Manner in which the Default is to be propoſed, after the Expiration of each Summons, is regulated in it. *(ibid.* §. 1. *ad* §. 10.)

(b) All the Deciſions that condemn a Party by Default in the principal Cauſe, have the Force of a peremptory Judgment; ſo that there is no Remedy either in the way of Oppoſition, or Reſtitution in full.

The Party condemned is, nevertheleſs, at Liberty, within ten Days, to make Uſe of the uſual Rules of Appeal, and to repreſent, with the principal Cauſe, the Eſſoins which prevented his making his Appearance: If the Hinderance be found to be lawful, the Expences of the Default are to be remitted.

(c) If a Perſon fore-judged in Default of a Proof, which he was to make, apply for Relief of the Default, or for full Reſtitution, the

the Matter ſhall be inquired into, and decided in a ſhort Space of Time.

As often as the Default is abated, or Reſtitution in full made to the Defailant, he is obliged, under Penalty of Fore-Judgment, to enter at the ſame time upon his Proof, and to deliver in directly probatory Articles. *ibid. pag.* 129. § 10.

(d) When any Perſon neglects to give in his Replication or Rejoinder during the Adjournment, he can neither be relieved of the Default, nor reſtored in full. In effect, if ſuch Negligences are committed in the firſt Inſtance, there is ſtill room for Reparation, and of urging the Right in the ſecond Inſtance: in the ſame Manner ſhould the Fault be committed in the ſecond Inſtance, there is ſtill a Remedy in the third; but when this laſt Opportunity is not laid hold of to give in the Exceptions, it may be naturally ſuppoſed, that the Cauſe has been ſufficiently debated in the two preceding Inſtances. *(ibid. pag.* 129. § 11.)

(e) The Advocates, who move in a Cauſe upon Default, are liable to a pecuniary Mulct, unleſs they produce, at the ſame time, the Return of the Intimation made to the adverſe Party. *Cod. Frid. Part. III. Tit. XVIII.* § 8.

XIV. The Delays have been greatly abridged, foraſmuch as an Advocate who has taken all his Information in the Manner above preſcribed,

ſcribed, has very little Occaſion to move for a Delay. *Cod. Frid. Part. III. Tit. IX.*

XV. The *Code-Frideric* removes all the Doubts that can ariſe in a common Suit upon a new Fact; and Things are ſo regulated in it that the principal Cauſe is not liable to be thereby retarded. *Part. III. Tit.* XX. § 10. *Tit.* XXXV. § 5. *& ſeq.*

XVI. The Time employed by the Parties in bringing their Proofs, has been hitherto one of the Cauſes that has contributed moſt to the Prolongation of Suits. The Code has provided a Remedy for this Defect by ordering:

(a) That no Delay ſhall ever be granted, (*i.e.* a further Delay than what is preſcribed by the Code) to enter upon the Proof, becauſe the Lawyer ought to have his Proofs ready before he inſtitutes the Suit. *dict. Tit. XXI.* § 2.

(b) That a Party injoined to bring Proof, and who ſhall have appealed from the Sentence, ſhall be held, without Prejudice to the Appeal, to bring in his Proof; upon Condition nevertheleſs that the Inqueſt ſhall remain ſealed up, till the End of the ſecond Inſtance. *ibid.* § 3.

(c) If a Perſon appeals from a Judgment by which the oppoſite Party has been admitted to Proof; that muſt not put a Stop to the Diſcuſſion of the Inqueſt, in the ſame Manner as in the preceding Caſe. *ibid.* § 3. & 4.

It

It has alſo been enacted, that in Diſputes where the Queſtion is to prove a Fact, it ought to be decided in Court by the Exceptions, without further Writings. (*ibid. Tit. XXVIII. § 73. p.* 164.)

XVII. To the End that no Subterfuge nor Evaſion may be made Uſe of in relation to the hearing of Witneſſes, it was thought neceſſary to regulate theſe Inqueſts Step by Step; and to inſert a Clauſe in all the Letters of Commiſſion iſſued for that Purpoſe, importing, that the Commiſſaries ſhall acquit themſelves, in a limited Time, of the Commiſſion which they have in Charge, otherwiſe they ſhall forfeit their Fees. *Cod. Frid. Part. III. Tit. XXVIII.* §. 38.

XVIII. There was alſo another Thing which occaſioned, formerly, exceſſive Delays in Law-Suits, and this happened when there was a Neceſſity of hearing foreign Witneſſes by a *Commiſſio rogatoria*. The Judge applied to for this was obliged to fix a Time for the *Audit*, and to ſummon to it the oppoſite Party; who, on his Part, was obliged to conſtitute a Mandatary upon the Spot, at the Expence of the Proſecutor. The Judge was ſeldom in a Hurry to execute his Commiſſion, and fixed the Time moſt convenient for himſelf. Thus the Depoſition of Witneſſes remained in a State of Oblivion, becauſe the Plaintiff did not hurry himſelf about having it taken up; ſo that ſometimes whole Years paſſed before the Inqueſt was ſent.

It may be ſeen in the *III. Part. Tit. XXVIII.* § x. of the *Code-Frideric*; what Precautions have been taken to prevent theſe different Inconveniencies. The Judge, who iſſues the *Literas rogatorias*, is obliged to inſert an expreſs Clauſe therein, importing,

(a) That the Judge commiſſioned is deſired to accelerate the Audit of Witneſſes, and to tranſmit their Depoſition in the Space of ſix Weeks; inaſmuch as by the preſent Conſtitution the Proof is deemed deſerted after that Term is elapſed, and conſequently the Inqueſt would be of no Utility. (b) That it is not neceſſary to give a formal Notification to the adverſe Party to be preſent at the Depoſitions of the Witneſſes, entire Reliance, as to the Audit, being placed in the Probity of the Judge. (c) That the Fees of Commiſſion, and Extracting, as well as thoſe of the Advocates who have been employed, and the travelling Charges and Maintenance of Witneſſes, ſhall be punctually paid, as ſoon as the ſame is ſpecified. (d) In fine, that upon all ſuch Occaſions the Reciprocal ſhall be ſtrictly obſerved. *Code Frid. Part. III. Tit. XXVIII.* § 75. & 77.

XIX. With regard to the *Examen à futur*, which the *Civilians* call *ad perpetuam rei memoriam*, Care has been taken to remove all the Doubts which formerly rendered that Proof ſo tedious and difficult, that Years elapſed before

fore it could be finiſhed. *(Cod. Frid. Part. IV. Tit. XXVIII. Sect. XI.)*

XX. In the *Code-Frideric* diverſe Regulations are inſerted, which prevent the Tricks and Shifts practiſed upon the Proof ariſing from the Information upon Oath. Theſe Regulations import,

1. That it is allowed to tender the Oath at the Commencement of the Suit, and upon the introductive Petition. *(Part. III. Tit. XXX. § 2.)*

2. That when the Oath is tendered to a Pupil, the Tutor or Curator is obliged to do it for him, and to take what they call in *Germany, the Oath of Credulity.* If he refuſes, the Cauſe is to be judged upon Default, reſerving to the Minor his Regreſs againſt the Tutor or Curator. *(ibid. § 6.)*

3. That the Form of the Oath is to be inſerted in the Sentence, with all the relevant Qualifications and Circumſtances. *ibid. § 10.*

4. That no Perſon whatever ſhall be exempted from taking an Oath tendered to him, under pretence of furniſhing Proofs of another kind.

5. That when a Party has once agreed to take the Oath tendered to him, there ſhall be no more room for Revocation, not even in the Caſe of being apprehenſive of Perjury. *(ibid. § 14. & ſeq.)* unleſs the Evidence of the Perjury is immediately verified. *(ibid. § 16.)*

6. That

6. That an Oath once refuſed cannot be afterwards tendered. *(ibid.* § 10.)

7. That an Oath agreed to be taken, ought to be eſteemed as taken when the Accepter dies before the actual taking of it. *(ibid.* § 28.)

8. That the Party who has tender'd an Oath to the other Party, is not obliged to take himſelf what they call *Juramentum Malitiæ**. *Cod. Frid. Part. III. Tit. XVI.* § 3.

9. That the Judges who are required to tender an Oath, ſhall be no longer obliged to ſummon the Parties to witneſs the Adminiſtration of it. *Cod. Frid. Part. III. Tit. XXX.* §. 29.

XXI. The *Code-Frideric* preſcribes a compendious Method, according to which the Courts are to proceed to the Inrotulation, and to the Diſtribution of the Writings of a Cauſe, to draw up the Sentences, as well as to moderate and to tax the Expences, Damages, and Intereſts. *Part. III. Tit. XXXV. XXXVI. XXXVII.*

As it was abſolutely neceſſary to determine the Caſes in which the Courſe of Appeal remained open or barred, Care has been taken to ſpecify, 1. The greateſt Part of Cauſes where the Appeal is not to take place. (*Cod. Frid. Tit. XXX.* §. 2.) 2. Thoſe in which the Appeal is indeed allowed, but without putting a Stop to the Execution of the Sentence, and only *quoad effectum devolutivum*, (ibid. §. 5.) and in

* *i. e.* To affirm that it is not from a bad Intention that he tenders this Oath.

in fine, 3. Thoſe in which the third Inſtance ought to be refuſed. *Tit. XL.* §. 2.

XXII. According to the old Conſtitution, when an Affair was decided, and Execution to follow thereupon, commonly a new Proceſs was ſtarted, which ſometimes took up more Time than had been required to diſcuſs the principal Cauſe. The Party conſtrained by way of Execution never failed to complain of Treſpaſs; particularly where the Caſe was Subhaſtation of *real Eſtates*, it ſeldom or never happened that he, whoſe Eſtate had been rated, did not complain of the Valuation that had been made.

The *Code-Frideric* has cut off all that gave Occaſion to theſe Subterfuges, by ordaining, *(Part. III. Tit. XLI.)*

1. That Sentences ſhall be put in Execution in the Space of four Weeks, reckoning from the Day of their being given. *(Ibid.* § 5. 17. & ſeq.)

2. That the Judge, who gives Order for the Execution, ſhall be obliged to ſpecify in his Decree, Article by Article, and with all the Circumſtances agreeable to the Subject, all the Debtor is obliged to do, to hold, to pay, or to reſtore. *(ibid.* § 5.)

3. That no Execution can be ſuſpended by Reſcripts or moratory Letters, unleſs it be neceſſary, for Reaſons of the laſt Importance, to make an Exception to the Law. *(ibid.* §. 7.)

4. The

4. The Code preſcribes, in a particular manner, how they ought to proceed to Execution upon Moveables *(Tit. XLI. § 28. & ſeq.)* and upon Immoveables. *(ibid. §. 37.)*

With regard to the laſt, it has been particularly enacted that the Debtor ſhall be always at Liberty to deliver a Valuation himſelf of the Produce of Eſtates that are to be ſubhaſtated, to ſpecify the Appurtenances and Dependances, and to annex thereto the Valuation of theſe laſt.

After ſworn Appraiſers ſhall have valued an Eſtate at a certain Sum, the Debtor can by no Means whatever reverſe that Eſtimation. *(ibid. §. 43.)* He can only, if he thinks proper, take the Benefit of the Right of Redemption in the reſpective Term of ſix Weeks, or ſix Months. *(ibid. § 58.)*

For theſe Reaſons the Reſtitution cannot be granted, neither upon account of Age, nor atrocious Grievance, in prejudice of an Adjudication. *(ibid. § 61.)*

XXIV. In fine, in the IV. Book of the *Code*, Cauſes that cannot be purſued in the manner of ordinary Suits, and which require a particular and ſhort Method of Proceeding, are treated ſeparately; and what occaſioned the making this Regulation, was the Remark made, that when theſe Cauſes were carried on in the manner of ordinary Suits, as frequently happened formerly, it gave occaſion to the greateſt Confuſions. Theſe Cauſes are,

1. The

1. The Cauſes under 50 Riſd. *(Cod. Frid. Part. IV. Tit. 2.)*

2. The Proceſſes for the *poſſeſſio ſummariſſimâ*. *(ibid. Tit. III.)*

3. The Suits for Defamation. *(ibid. Tit. IV.)*

4. The Suits purſued by the Fiſc. *(ibid. Tit. V.)*

5. Cauſes put in Commiſſion, and the manner of proceeding in them. *(ibid. Tit. VI.)*

6. The manner of attempting to bring about an Accommodation between the Parties. *(ibid. Tit. VII.)*

The Suits betwen Lords and their Vaſſals, between the Proprietors of Land-Eſtates and their Farmers, between Minors and their Curators, and alſo the Suits which ariſe upon Account of Boundaries and Limits, *&c.* *(ibid. Tit. VIII.)*

8. The Suits relating to Bankruptcies, *(ibid. Tit. X.)*

§ XXV. It only now remains to ſhew, by a juſt Repartition of the Year beyond which a Proceſs ought not to be prolonged, that it is not only poſſible to finiſh it in that Term, but that, beſides, there is no juſt Cauſe of Complaint that Cauſes are hurried, and, in a manner, murdered for the ſake of Expedition.

§ XXVI. The Time employed by the Plaintiff in preparing his Suit, in the manner preſcribed by the *Code-Frideric*, being at his own

Diſcretion, makes no part of the Year in queſtion.

§ XXVII. The Defendant is allowed (if he cannot be ſooner prepared) three Months time, including the Prorogations of Delay, to give his Advocate the neceſſary Informations, and to furniſh his Exceptions.

Now, as it is only by the Exceptions that a Cauſe, ſo to ſpeak, is tied or bound, and that conſequently the Proceſs, and the Year beyond which it is not to laſt, are only to be reckoned from the Time that the Cauſe was conteſted, it naturally reſults from thence, that the Time elapſed between the entering upon, and that of conteſting the Cauſe, is likewiſe not to be compriſed in the Year in queſtion.

§ XXVIII. For the firſt Inſtance, therefore, is only reckoned the Time which the Replications and the Rejoinders require; and in order to prepare them, two Months are granted to the Plaintiff, and the ſame to the Defendant, including nevertheleſs the Prorogations of Delay.

By Things being thus diſpoſed, a Cauſe may be ſufficiently inſtructed in the *firſt Inſtance*, in the Space of four Months, which are reckoned from the Day of the Cauſe's being conteſted, to the definitive Sentence.

§ XXIX. The King has granted, for the *ſecond Inſtance*, from four to five Months, of which here follows the Subdiviſion. The Appeal

peal muſt be brought in the Space of ten Days, and juſtified in four Weeks. The Parties are allowed three Months to furniſh their Anſwers, Replications, and Rejoinders; and even ſuppoſing that a Prorogation of Delay for eight Days be granted to each Party, all that taken together makes no more than five Months.

But there is no Occaſion for four or five Months, except in Courts of Juſtice compoſed of only one ſingle Senate. In Places where there are two Senates, Proceedings are much ſhorter, as in *Pomerania*, *Brandenbourg*, *Magdebourg*, *Sileſia*, and *Cleves*. In theſe Places when an Appeal is brought in within ten Days, and juſtified within the Space of four Weeks, the firſt Senate ſends the Writings of the Proceſs, without any Formality, to the ſecond Senate, who diſtributes them immediately. If it is diſcovered by the anterior Writings, that the Grievances of the Appellant are not founded, the firſt Sentence, without farther Proceeding, is confirmed, and the Reaſons for ſo doing given; ſo that in this Caſe the *ſecond Inſtance* is finiſhed within two Months.

On the contrary, when the Grievances of the Appellant are judged to be relevant, Intimation is made to the Party ſummon'd, of the Relief or Juſtification of Appeal, with Orders to the Parties to furniſh every Fortnight, or four Weeks, the requiſite Writings; ſo that even in

this laſt Caſe, the *ſecond Inſtance* is to be terminated in four or five Months at moſt.

It muſt be even remarked, that ſuppoſing, by the Means of thoſe different Delays, a Proceſs ſhould laſt four or five Months in the *ſecond Inſtance*, putting Things upon the worſt Footing, the greateſt Part of the Advocates have no Occaſion for ſo long Terms. In Effect, the Advocate being obliged to inform himſelf with the utmoſt Exactneſs, of the Nature and Circumſtances of an Affair before he inſtitutes a Suit, and being thus in a Condition to clear it perfectly up at the *firſt Inſtance*, he has neither Occaſion for copious Writings, nor to aſk any prolongation of Delay in the *ſecond Inſtance*.

To which it is proper to add, that with regard to Facts that lie in Proof, they muſt be judged of and decided by the Exceptions: So that in theſe Caſes two Pieces of Writing are only admitted.

§ xxx. Three Months are granted to the Parties for the *Inſtance of Reviſion*, which is the third and laſt.

The Plaintiff in *Reviſion* has ten Days to declare that he will move in the *third Inſtance*, and four Weeks to furniſh his Grounds of *Reviſion*. The Defendant in *Reviſion* is held to give in his Anſwers in four Weeks more, after which the Information is cloſed, no Piece being intitled to be received after the Anſwer to the Grounds of *Reviſion*. It

appears

appears by this Detail, that the *third Inſtance* can be commodiouſly terminated in the Space of three Months.

§ XXXI. The Plan, nevertheleſs, which has now been deſcribed, neceſſarily ſuppoſes two Things. Firſt, that the Advocates be Men of Honour and Probity, conſcientious, in whom ſordid Intereſt is not predominant, who avoid light, frothy Company, with whom ſeveral of them formerly trifled away their whole Afternoons; and, in one Word, that they be Men who employ their whole Time and Attention in the Affairs committed to their Charge. In the ſecond Place, the Counſellors muſt be Men of Underſtanding and diligent, capable of drawing up their Reports in the Space of eight or fifteen Days, and to ſupport them with Reaſons *pro* and *con*.

§ XXXII. It muſt be confeſſed, that the Courts of Juſtice eſtabliſhed by the King have ſo thoroughly entered into the Spirit of this Plan, and have ſo accuſtomed themſelves to follow it, that Law-Suits are conducted and terminated in perfect Conformity to it, and in ſuch a Manner that there is no Room left for Doubt or Complaint upon that Account.

§ XXXIII. It is, however, eaſily to be conceived, that Caſes and Circumſtances may offer, where it is morally impoſſible to finiſh a Proceſs within the Year; as for Inſtance, where there is a Neceſſity of examining Witneſſes

neſſes in *Batavia*, or if they would oblige (as the Caſe has happened) an Officer of the King's Troops, who is gone a recruiting to foreign Parts, to furniſh, in the limited Time, ſome Title or Document: But right Reaſon teaches, that the Law never extends to Caſes where there is an abſolute Impoſſibility of performing the Conditions which it preſcribes.

As ſuch Caſes are extremely rare, and that ſcarce two or three Examples thereof will happen in a Court of Juſtice, ſo are they no Hindrance to the general Rule's remaining in its full Force, to wit, that all Proceſſes can and muſt be finiſhed in the Courſe of a Year.

§ XXXIV. It will perhaps be objected, that the Plan now laid down would be practicable, if the Proceſſes were commenced by the Advocates only with a View of obtaining a definitive Sentence, and if the Judges pronounced definitively without Delay upon the main Point; but as different Incidents often fall in the Way to ſtop the Courſe of the principal Cauſe, it would ſeem that a Year is not a competent Time to bring Law-Suits to a final Iſſue. I anſwer,

1. That Incidents cannot readily happen, provided the two Advocates have been careful to inform themſelves at the Beginning, and in the Manner preſcribed, of all the Circumſtances of an Affair with which they are to be charged,

charged, and that thereafter they form their Demands and Exceptions upon the Inſtructions which they have received.

2. It is certain that the Advocates will take Care not to throw in ſuch unſeaſonable Incidents, becauſe thoſe which they might have prevented by taking proper Informations before commencing the Suit, not only expoſe them to the Loſs of their Fees, but likewiſe to a Penalty of five Rix-dollars.

3. When, notwithſtanding all theſe Precautions, an unexpected Incident ariſes, it is moved by a verbal Remonſtrance, that the Parties be heard upon that Point, and for moſt Part the Incident is ſettled at the firſt Sitting.

4. It has been already remarked that the greateſt part of the Advocates take no Advantage of the long Delays that have been granted for a *firſt* and *ſecond Inſtance*. It often happens that an Advocate who is a Man of Honour, and who ſees that it would be ſuperfluous to renew, in a *ſecond Inſtance*, what had been fully diſcuſſed in the Firſt, refers himſelf intirely to the Writings of the Proceſs, ſo that Incidents occaſion no Change or Hindrance with reſpect to the principal Affair.

5. Beſides, there are a Multitude of Cauſes, of no great Conſequence, that are not to be carried on in the Manner of Proceſſes at large,

but

but the Parties in such Suits are ordered to furnish in three, eight, or fifteen Days, Memorials to supply the Place of verbal Pleading.

§ xxxv. This must, finally, be taken Notice of, that the Execution of this Plan depends chiefly upon a certain Dexterity and Skill not easily acquired, if we are not Eye-witnesses to the Manner in which it is executed, and by frequent Practice acquire a thorough Knowledge.

FINIS.